

Supreme Court, U.S.
FILED

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JOSEPH F. SPANIOL, JR.
CLERK

①
CASE NO. 86-2069

**IN THE
SUPREME COURT
OF THE UNITED STATES**

OCTOBER TERM, 1986

REV. JACOB E. JUDGE and SAMUEL JUDGE,
Petitioners,

vs.

CITY OF FORT LAUDERDALE,
Respondent.

**ON WRIT OF CERTIORARI FROM THE
SUPREME COURT OF THE STATE OF FLORIDA**

PETITION FOR WRIT OF CERTIORARI

**ROBERT H. SCHWARTZ, ESQUIRE
GUNTHER & WHITAKER, P.A.
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Fort Lauderdale, FL 33302
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10702

CASE NO. _____

IN THE
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OF THE UNITED STATES

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THE PETITION FOR WRIT OF CERTIORARI

QUESTION PRESENTED FOR REVIEW

WHETHER THE DETERMINATION BY THE COURTS OF THE STATE OF FLORIDA THAT PETITIONERS WAIVED THEIR RIGHT TO A JUDICIAL DETERMINATION OF PUBLIC NECESSITY IN A STATE EMINENT DOMAIN PROCEEDING WAS VIOLATIVE OF THEIR RIGHTS AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

LIST OF PARTIES TO THE PROCEEDING

PETITIONERS:

- (a) REVEREND JACOB E. JUDGE,
and
- (b) SAMUEL JUDGE

RESPONDENT:

- (a) CITY OF FORT LAUDERDALE,
FLORIDA

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Order denying Petitioners' motion to rehear made by Judge Patricia Cocalis of the Seventeenth Judicial Circuit in and for Broward County, Florida; Case No. 80-10997-CG; dated October 16, 1985; see Appendix 4.

Order made by Judge Patricia Cocalis of the Seventeenth Judicial Circuit in and for Broward County, Florida; Case No. 80-10997-CG; dated July 22, 1985; see Appendix 5.

Order denying Petitioners' motion to set aside the taking made by Judge Barbara Bridge of the Seventeenth Judicial Circuit in and for Broward County, Florida; Case No. 80-10997; dated February 25, 1981; see pp. 6 of Appendix 6.

GROUND ON WHICH JURISDICTION IS INVOKED

The judgment sought to be reviewed is the order of dismissal of the Florida Supreme Court dated and entered on March 17, 1987.

The statutory provisions conferring jurisdiction on the United States Supreme Court are 28 U.S.C. §1257(3) and 28 U.S.C. §2101(c).

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

Fifth Amendment of the United States Constitution, West's F.S.A. United States Constitution, Amendment 5 (see Appendix for text).

Fourteenth Amendment of the United States Constitution (Sec. 1), West's F.S.A. United States Constitution, Amendment 14, §1 (see Appendix for text).

Article 1, Sec. 9 of the Constitution of the State of Florida, F.S.A. Constitution, Article 1, §9 (see Appendix for text).

Florida Statute Sec. 74.051, West's F.S.A. §74.051 (see Appendix for text).

STATEMENT OF THE CASE

This is a Petition for Writ of Certiorari from an order of the Supreme Court of Florida dated March 17, 1987, dismissing the Petitioners' Application for Review of an affirmance of a ruling of the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida by the Fourth District Court of Appeal.¹ In this per curiam judgment the Fourth District Court of Appeal affirmed a final judgment entered by the Honorable Lamar Warren on May 9, 1987.

This judgment approves a jury verdict as to the amount of compensation to be made to the Petitioners for an interest in property taken by the City of Fort Lauderdale, Florida pursuant to an order of taking previously entered in this eminent domain proceeding.

1. Pursuant to Florida law the Florida Supreme Court will not grant an application for review of a per curiam ruling by the intermediate appellate court. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

The trial court² had previously determined that the Petitioners had waived their right to a judicial determination of public necessity for the taking as required by law. Petitioners have contended throughout these proceedings that they did not waive their constitutional and statutory rights to the

2. The ruling in question was initially made by Judge Barbara Bridge at a hearing held on February 25, 1981. The correctness of her determination that Reverend Judge had waived his right to a judicial determination of public necessity was the subject of an evidentiary hearing before Judge Patricia Cocalis on April 26, 1985. Judge Cocalis ruled that Judge Bridge had correctly determined that the waiver was knowingly and intelligently made, and therefore, petitioners were not thereafter entitled to a hearing on that issue. Judge Warren was assigned by the presiding judge to conduct the trial of the remaining issue in the eminent domain proceeding, that is the proper valuation of the property in question. The final judgment entered by Judge Warren triggered the appellate review which culminated in the dismissal of the appeal by the Florida Supreme Court on March 17, 1987, and it is this order from which the petitioners seek the writ. Judge Cocalis was assigned the case as the result of the recusal of her predecessor judges including Judge Bridge.

judicial determination of public necessity, and therefore, the proceedings that followed the entry of the order of taking were violative of their rights as guaranteed by the due process clause of the Fifth and Fourteenth Amendments to the Constitution of the United States.

The jury trial to determine the issue of compensation was conducted over the petitioners' objections, and therefore, the correctness of the jury award is not at issue here. §74.051, Fla. Stat.

It is the trial court's determination that petitioners had waived their right to a judicial determination of public necessity that is the basis for this petition. This is based upon petitioners' stated belief that the exercise of their right to a hearing on public necessity would have amounted to the abandonment of their claim against the City of Fort Lauderdale for deliberately attempting to circumvent their rights by

feigning ignorance to the basis for their claim.³

3. The Judge brothers had obtained an interest in the property in question by virtue of a contract for deed which by custom is not recorded until the installment purchase is completed. They contended that it was their intention to use the premises for religious purposes thereby given it protected status. They further contended that other churches within this development project were allowed to remain as protected premises and that the action of the City of Fort Lauderdale in pretending ignorance of their property interest was for the express purposes of avoiding the protected use issue.

PROCEEDINGS BELOW

The issue as to the requirement of a judicial determination of public necessity as a condition precedent to the order of taking was initially raised by the Petitioners' original attorney, Tom Bush, at a hearing on January 5, 1981 upon the Petitioners' Motion to Set Aside the Order of Taking, before Judge Barbara Bridge. At the hearing, Mr. Bush stated:

I do not know whether there was a proper inquiry into the necessity for the taking, and that's the only issue that I'm concerned about. We are by no means stipulating to any fair market value of the property, but that's not the issue that I wish to litigate at this time. That issue will be litigated at a subsequent time, and I'm not waiving any rights as to that.

My concern is with the City of Fort Lauderdale being able to convince the Court by a preponderance of evidence there is, in fact, a necessity for the taking of Parcel 3-8. (A. 7, pp. 3-4).

At the conclusion of this hearing, Judge Bridge scheduled a hearing for January 9, 1981 to determine whether the City of Fort Lauderdale could demonstrate a sufficient basis for the taking.⁴ At the January 9, 1981 hearing Mr. Bush was allowed to withdraw as counsel for the Petitioners.⁵ As a result of Mr. Bush's withdrawal a hearing on public necessity was not held but rather was postponed until a later date.

On February 25, 1981 a hearing was held before Judge Barbara Bridge on the Petitioners' Motion to Set Aside the Order of Taking.⁶

4. The order of taking had been entered prior to the Judges' entry into the litigation, because the City contended that the existence of their interest in the property was not previously known.

5. An irreconcilable conflict had arisen between attorney and clients, and both consented to the withdrawal.

6. The motion was brought before the court by counsel for the City and Petitioners were not represented by counsel. Reference to Petitioners is to Samuel and Jacob Judge who are brothers, but because of physical disabilities to Samuel Judge, Jacob Judge is the actor involved in the proceedings.

At this hearing Judge Bridge ruled that the Petitioners had waived their right to a hearing on the issue of public necessity and she denied the Motion to Set Aside the Order of Taking.⁷ (A. 6, p. 6).

The federal question as to whether the Petitioners had effectively waived their constitutional right to a judicial determination of public necessity was raised by the Petitioners through Joint Pretrial Stipulation of the parties on March 8, 1984. (A. 9, p. 5). The federal question was addressed at an evidentiary hearing before Judge Patricia Cocalis on April 26, 1985. (A. 8, pp. 7-8). At this hearing Judge Cocalis ruled by an order dated July 22, 1985, that the Petitioners had knowingly and intelligently waived their right to a

7. Present counsel was appointed over two (2) years after this hearing. Reverend Judge was not represented during the period following January 9, 1981 until late 1983.

judicial determination of the issue of public necessity of the taking. (A. 5, p. 2).

The Petitioners again raised the federal question by Motion to Rehear (A. 10, p. 2), filed July 30, 1985, which was denied on October 16, 1985. (A. 4).

The Presiding Judge then assigned Judge Lamar Warren to conduct the trial of the remaining issue, a jury determination as to the proper valuation of the property. The Final Judgment entered by Judge Warren on May 9, 1986 reflects a Jury Verdict on that issue and it is that final judgment that precipitated the appellate review. (A. 3).

Petitioners took an appeal from the Final Judgment to the Fourth District Court of Appeal of Florida raising the waiver issue. (A. 12).

On February 4, 1987, the Fourth District Court of Appeal, in a per curiam decision,

affirmed the Final Judgment of Judge Warren of the Seventeenth Judicial Circuit. (A. 2).

The Petitioners then brought the federal question before the Supreme Court of Florida by a Petition for Discretionary Review. (A. 13). On March 17, 1987 the Supreme Court of Florida dismissed the Petitioners' Petition for Review for lack of jurisdiction.⁸ (A. 1).

This petition follows.

8. The Florida Supreme Court will not hear cases decided per curiam by a District Court of Appeal. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

ARGUMENT

Petitioners' alleged waiver of their right to a judicial determination of the issue of public necessity for the taking of their property was based upon their belief that they would forfeit the right to litigate their claim that the City of Fort Lauderdale had deliberately ignored their property interest in an attempt to circumvent determination of whether the property in question should be exempted from the eminent domain proceedings because of its intended use for religious purposes. Simmons v. United States, 390 U.S. 377, 394 (1968). (The surrender of one constitutional right may not be required in order to assert another).

The decisions of the courts below were erroneously based upon the determination that Petitioners had waived their rights to a

judicial determination of public necessity for the taking of their property. See Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 92 L.Ed.2d 1461 (1938). (Courts will "not presume acquiescence in the loss of fundamental rights.")

Because the lower court rulings conflict with at least two (2) United States Supreme Court cases, this Petition for Writ of Certiorari is properly before the Court under Rules 17.1(b) and 17.1(c) of the United States Supreme Court Rules.

Throughout this case the Petitioners have contended that the City of Fort Lauderdale had actual knowledge of their equitable interest in the property, but deliberately ignored their interest so as to avoid confronting their claim for exemption from the eminent domain proceeding based on their intended use of the property for religious purposes. The Petitioners

contended that they purchased an interest in the property to establish a church and that the City deliberately ignored their interest in said property because recognition of the intended use of the property would have required a judicial determination as to whether it would be entitled to exempt status.

At an evidentiary hearing before Judge Cocalis on April 26, 1985, and in response to a question as to whether the City had acted improperly in seeking to condemn the property in question, Reverend Judge stated:

I think everybody knew that, but that was not important from the time that I find that out. The most important thing that was important when I find that out is why did the City commit a defraud?

(A. 8, p. 14) (emphasis added).

The above testimony demonstrates that the Petitioner firmly believed that the City had deliberately ignored their interest in the property.

The Petitioners desired to have proper recognition of their interest in the property -- not to simply be pawns in the condemnation proceeding -- and they believed the only way they could get a proper determination of the intended use was to prove that the City had intentionally ignored their interest to avoid litigating whether or not the property was entitled to an exemption from the eminent domain proceeding by virtue of the intended use.

On February 25, 1981, before Judge Barbara Bridge Reverend Judge had stated:

So the only way that I could receive my property back - Let the City come and say, Mr. Judge, there was a mistake. Mr. Judge, we are going to let you accept the responsibility of this property because it was illegal the way we took it.

(A. 6, pp. 3-4).

Petitioners believed that a hearing on the issue of public necessity would amount to a waiver of their right to properly litigate

the exempt status of the property. Simmons, supra, at p. 394. The issue of procedural fraud in obtaining the order of taking was foremost in their minds and, therefore, they were not aware of the potential consequences of their "waiver" of the necessity hearing. Johnson v. Zerbst, supra; Cf. Edwards v. State, 393 So.2d 597 (Fla. 3rd DCA 1981).

The City's position that the Petitioners' greater concern with demonstrating the City's fraudulent taking creates an implied waiver of their right to a hearing on the issue of necessity conflicts with the rule of law that courts must "indulge every reasonable presumption against waiver of fundamental constitutional rights." Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed.2d 1461 (1938). The Supreme Court in Johnson further observed that courts will "not presume acquiescence in the loss of fundamental rights". Id. The

decisions of the courts below determine that Petitioners waived their Fifth and Fourteenth Amendment rights to a judicial determination of public necessity. Since the record clearly demonstrates that Petitioners intended to use the property for religious purposes, thereby creating a potential defense to the public necessity issue, it is constitutionally unreasonable to presume that they waived their right to a judicial determination as to the exempt status of the property. The presumption is impermissible because it results in the loss of a constitutional right directly in conflict with Johnson v. Zerbst.

The decisions of the courts below placed the Petitioners in the untenable position of waiving one constitutional right in order to assert another. Such a position is impermissible under Simmons and the lower court's determination of a knowing and

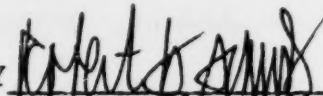
intelligent waiver fails to overcome the
presumption against the waiver of
constitutional rights.

CONCLUSION

For all of the foregoing reasons,
Petitioners respectfully submit that this
Writ of Certiorari be granted.

Respectfully submitted,

BY

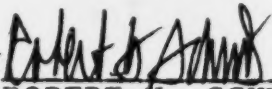


ROBERT H. SCHWARTZ
GUNTHER & WHITAKER, P.A.
Attorneys for Petitioners
Post Office Box 14608
Fort Lauderdale, FL 33302
(305) 523-5885

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to: THOMAS J. ANSBRO, JR., ESQUIRE, Deputy City Attorney, City of Fort Lauderdale, Post Office Drawer 14250, Fort Lauderdale, Florida 33302 and BETTE S. BARON, ESQUIRE, 11615 Northeast 21st Drive, North Miami, Florida 33181, this 17th day of June, 1987.

GUNTHER & WHITAKER, P.A.
Attorneys for Petitioners
Post Office Box 14608
Fort Lauderdale, FL 33302
(305) 523-5885

BY 
ROBERT H. SCHWARTZ

CASE NO. _____

IN THE
SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1986

REV. JACOB E. JUDGE and SAMUEL JUDGE,
Petitioners,

vs.

CITY OF FORT LAUDERDALE,
Respondent.

ON WRIT OF CERTIORARI FROM THE
SUPREME COURT OF THE STATE OF FLORIDA

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

ROBERT H. SCHWARTZ, ESQUIRE
GUNTHER & WHITAKER, P.A.
Attorneys for Petitioners
Post Office Box 14608
Fort Lauderdale, FL 33302
(305) 523-5885

- (d) Notice of Appeal in the
Seventeenth Judicial
Circuit in and for Broward
County, Florida, dated June
5, 1986 A. 12
- (e) Notice of Invoke Discret-
ionary Jurisdiction in the
Fourth District Court of
Appeal of Florida, dated
May 6, 1987 A. 13
- (3) Copies of Relevant Constitutional and
Statutory Provisions:
 - (a) Fifth Amendment of the
Constitution of the
United States. A. 14
 - (b) Section 1 of the Fourteenth
Amendment of the Consti-
tution of the United
States. A. 15
 - (c) Article 1, Section 9 of the
Constitution of the State
of Florida A. 16
 - (d) Florida Statutes §74.051. A. 17
 - (e) 28 U.S.C. §2101(c). . . . A. 18
 - (f) 28 U.S.C. §1257(3). . . . A. 19
 - (g) Rule 17.1(b) of the United
States Supreme Court Rules A. 20
 - (h) Rule 17.1(c) of the United
States Supreme Court Rules A. 20

SUPREME COURT OF FLORIDA

TUESDAY, MARCH 17, 1987

REV. JACOB E. JUDGE and
SAMUEL JUDGE,

Petitioners,

v.

CITY OF FORT LAUDERDALE,

Respondent.

* * * * *

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

No Motion for Rehearing will be entertained by the court.

TC

CC: Hon. Clyde Heath, Clerk
Hon. Lamar Warren, Judge
Hon. Robert E. Lockwood,
Clerk

Robert H. Schwartz, Esquire
Thomas J. Ansbro, Esquire
Bette S. Baron, Esquire

IN THE DISTRICT COURT OF APPEAL OF THE STATE
OF FLORIDA FOURTH DISTRICT JANUARY TERM 1987

REV. JACOB E. JUDGE and SAMUEL))	
JUDGE,)	
)	
Appellants,)	
)	
v.)	CASE NO. 4-
)	86-1309.
CITY OF FORT LAUDERDALE,)	
)	
Appellee.)	
)	

Decision filed February 4, 1987

Appeal from the Circuit Court for
Broward County; Lamar Warren, Judge.

Robert H. Schwartz of Gunther & Whitaker,
P.A., Fort Lauderdale, for appellants.

Donald R. Hall, City Attorney, and
Thomas J. Ansbrosio, Jr., Deputy City
Attorney, Fort Lauderdale, for Appellee.

PER CURIAM.

AFFIRMED.

DOWNEY and STONE, JJ., and RIVKIND, LEONARD,
Associate Judge, concur.

IN THE CIRCUIT COURT
OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN
AND FOR BROWARD
COUNTY, FLORIDA

Case No. 80--10997 CG
"J" Warren

CITY OF FORT LAUDERDALE,

Petitioner,

vs.

FINAL JUDGMENT

LAVERNE MOORE, et. al.,

PARCEL NO. 3-8

Defendants.

THIS CAUSE came on for trial and the jury, having been empaneled and sworn to try the compensation to be made to the Defendants for the property sought to be appropriated, and having heard the evidence and charges of the Court, and having retired to consider the verdict, on March 19, 1986, the jury returned the following verdict:

IN THE CIRCUIT COURT
OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN
AND FOR BROWARD
COUNTY, FLORIDA

CASE NO. 80-10997 CG

CITY OF FORT LAUDERDALE,
Petitioner,

vs.

VERDICT

LAVERNE MOORE, et. al.,
Defendants.

We, the Jury, find for the
Petitioner, as follows:

FIRST: That an accurate
description of the property taken herein is
the following:

PARCEL 3-8 Near Northwest Re-
development Project-
4907

Fee Simple Title

Lots 8, 9, 10, 11, and 12, MARY
REYNOLD'S SUBDIVISION, of a part of
Lot 1, Block 5, FORT LAUDERDALE, as
per plat thereof recorded in Plat
Book 2, Page 25 of the Public
Records of Broward County, Florida.

OWNED BY: Marylin S. Baron
SUBJECT TO: Unrecorded lease by
Little Angel
Apartments

26, 1980 (the date of deposit of money heretofore made),

Lots 8, 9, 10, 11 and 12, MARY REYNOLD'S SUBDIVISION, of a part of Lot 1, Block 5, FORT LAUDERDALE, as per plat thereof recorded in Plat Book 2, Page 25 of the Public Records of Broward County, Florida.

is approved, ratified and confirmed, and is appropriated to Petitioner for use in its Near Northwest Redevelopment (Urban Renewal) Project of the City of Fort Lauderdale, Florida.

The Clerk of the above-styled Court is hereby ordered and directed ONLY AFTER entry of a subsequent Order by the Court of apportionment of the compensation by the Court to any Defendant having an interest in the compensation, to pay from the funds deposited into the Registry of the Court by the Petitioner, the sum so stated above less any sum heretofore withdrawn, if any.

Jurisdiction is reserved by the Court to award allowable fees and costs of this proceeding.

SECOND: That the compensation to be made by the Petitioner for the above-described parcel of land is as follows:

FOR PARCEL 3-8, described above, owned by

The record title owner, Mrs. Marylin S. Baron, subject to the interests of Jacob Judge and Samuel Judge, under an unrecorded agreement for deed.

Value of the land taken (including all improvements taken)

\$19,000.00

So say we all this 19th day of March, 1986, at Fort Lauderdale, Broward County, Florida.

B. Russell

FOREMAN

IT IS THEREFORE ADJUDGED that:

1. Title to the property described in the Verdict which property vested in the Petitioner, CITY OF FORT LAUDERDALE, pursuant to the Order of Taking dated August 7, 1980, and effective as of August

26, 1980 (the date of deposit of money heretofore made),

Lots 8, 9, 10, 11 and 12, MARY REYNOLD'S SUBDIVISION, of a part of Lot 1, Block 5, FORT LAUDERDALE, as per plat thereof recorded in Plat Book 2, Page 25 of the Public Records of Broward County, Florida.

is approved, ratified and confirmed, and is appropriated to Petitioner for use in its Near Northwest Redevelopment (Urban Renewal) Project of the City of Fort Lauderdale, Florida.

The Clerk of the above-styled Court is hereby ordered and directed ONLY AFTER entry of a subsequent Order by the Court of apportionment of the compensation by the Court to any Defendant having an interest in the compensation, to pay from the funds deposited into the Registry of the Court by the Petitioner, the sum so stated above less any sum heretofore withdrawn, if any.

Jurisdiction is reserved by the Court to award allowable fees and costs of this proceeding.

DONE in Chambers at Fort Lauderdale,
Florida, on May 9, 1986.

CIRCUIT JUDGE

LAMAR WARREN

Copies furnished:

Rev. Jacob Elijah Judge
T. J. Ansbro, Jr., Esq.
Bette Baron, Esquire,
attorney for Marilyn S. Baron

IN THE CIRCUIT COURT
OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN
AND FOR BROWARD
COUNTY, FLORIDA

CASE NO. 80-10997-CG
("J" Cocalis)

CITY OF FORT LAUDERDALE,

Plaintiff,

vs.

LAVERNE MOORE, ET. al.,

ORDER (DENYING
DEFENDANTS' MOTION
TO RE-HEAR)

Defendants.

THIS CAUSE came before me in Chambers upon the Motion to Re-Hear of Defendants, Jacob Judge and Samuel Judge, filed by their counsel which Motion was dated July 20, 1985. Subsequently, on August 20, 1985, Defendants' counsel filed a Memorandum of Law in Support of Defendants' Motion to Re-Hear. The Court reviewed and considered both the Motion and the supporting Memorandum, and being otherwise advised in the premises, it is:

ORDERED:

1. That the Defendants' Motion to Re-Hear is denied.

Ordered in Chambers at Fort
Lauderdale, Broward County, Florida, on
October 16, 1985.

PATRICIA W. COCALIS

CIRCUIT JUDGE

Copies furnished:
Counsel of record

IN THE CIRCUIT COURT
OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN
AND FOR BROWARD
COUNTY, FLORIDA

Case No. 80-10997 CG
("J" Cocalis)

CITY OF FORT LAUDERDALE,

Petitioner,

vs.

LAVERENE MOORE, et. al.,

Defendants.

O R D E R

THIS CAUSE came on to be heard before the Court in Chambers on April 26, 1985. At such time, the Court heard testimony from witnesses called by each of the parties. Each of the parties was represented by counsel. Upon conclusion of the hearing, the Court reviewed twelve (12) volumes of documents contained in the court file, which included review of depositions and of each transcript of each hearing held in connection with this cause, prior to its assignment to

this Court. The Court finds that Defendant, Rev. Jacob Elijah Judge, on behalf of himself and his brother, Co-Defendant Samuel Judge (both of whom were represented by counsel) knowingly and intelligently waived the right to contest the issue of Petitioner's necessity for the taking of Parcel 3-8. Accordingly, it is

ORDERED:

1. That the issue of necessity for the taking was knowingly and intelligently waived by the Defendant, Rev. Jacob Elijah Judge, on behalf of himself and his brother, Co-Defendant Samuel Judge (both of whom were represented by counsel).

2. That upon proper notice by any party, this cause shall be scheduled for jury trial to determine the value of the property and the compensation to be paid to the Co-Defendants, or to any other party entitled to compensation for the taking, or both.

DONE in Chambers at Fort Lauderdale,
Broward County, Florida on July 22, 1985.

PATRICIA W. COCALIS

CIRCUIT JUDGE

Copies furnished:

Robert Schwartz, Esquire
T. J. Ansbrosio, Jr., Esquire
Rev. Jacob E. Judge
Bettye Baron, Esquire

6644g

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA CIVIL ACTION

CITY OF FORT LAUDERDALE,)
)
Plaintiff,)
)
vs.) No. 80-10997
) (Bridge)
LAVERNE W. MOORE, et. al.,)
)
Defendants.)
-----x

Fort Lauderdale, Florida
February 25, 1981
11:00 o'clock A.M.

APPEARANCES:

ROSS, NORMAN & CORY, P.A.,
by DONALD NORMAN, ESQ., of counsel,
appearing on behalf of the Plaintiff.

JACOB JUDGE,
in propria persona.

The above-styled case came on for
hearing before the Honorable BARBARA BRIDGE,
Presiding Judge, at Broward County
Courthouse, Fort Lauderdale, Broward County,
Florida, on the 25th day of February, 1981,
commencing at 11:00 o'clock A.M.

Bass Reporting Service, Inc.

Thereupon:

The following proceedings were had:

THE COURT: This is a motion to set aside order of taking in the matter of case number 80-10997 pending in the Circuit Court of the 17th Judicial Circuit of Florida in and for Broward County, in re: The City of Fort Lauderdale vs. Laverne W. Moore, et. al.

Now, the matter that is set before the Court today, is this your motion, Mr. Judge?

MR. NORMAN: He just called up his motion, Judge.

THE COURT: It was by telephone?

MR. NORMAN: It was by formal notice of hearing.

THE COURT: The Court granted the motion to withdraw. Did you file anything in writing, Mr. Judge, about today's hearing?

MR. JUDGE: No, not at all.

MR. NORMAN: Your Honor will recall that Mr. Bush filed a motion on behalf of Mr. Judge.

THE COURT: Who?

MR. NORMAN: Mr. Tom Bush filed a motion to set aside the order of taking on behalf of Mr. Judge. Then we started the hearing early in the year. I believe it was in January..

THE COURT: You had earlier indicated you didn't get notice of the hearing on the order of taking, and you felt you had been deprived of your rights.

Now the City is perfectly willing to go ahead and have such a hearing.

All I can say to you, sir, is do you or do you not want this hearing? Yes or no?

MR. JUDGE: No. I do not want to have an order of taking set aside, due to the fact that I have proof that the City has taken legal possession of the property, and was supposed to demolish theh property the 28th of December.

So the only possible way that I could receive my property back -- Let the City come and say, "Mr. Judge, there was a mistake. Mr.

Judge, we are going to let you accept the responsibility of this property because it was illegal the way we took it."

The only thing I would like from the Court at this hearing, if Mr. Norman or the Court could supply me with a copy of the unrecorded lease by the Little Angel Apartments at the declaration of taking. I would like to have a copy of that lease.

MR. NORMAN: Your Honor, I don't know that there is such a document. We were told that Little Angel Apartments was a lessee from Marilyn Baron. Whether the lease was written or verbal, we were never told that.

We were told that the lawyer member of the family, Betty Baron, would accept service of process for Marilyn Baron and Little Angel Apartments, which she did.

If anybody had any document, it would be Mrs. Baron.

THE COURT: Do you remember one of the hearings that you were here on that Mrs.

Baron was here?: Do you remember that, Mr. Judge:

MR. JUDGE: Yes.

THE COURT: What Mr. Norman is saying is, number one, "I don't have that." They don't have any documents in their possession.

So, sir, the thing is that, if anybody would have it, according to Mr. Norman, it's going to be Mrs. Baron as the attorney for, I guess the Baron family. Would that be correct?

MR. NORMAN: I think so. They have other interests, too.

MR. JUDGE: Who drew up this order of taking and the declaration of taking?

MR. NORMAN: That was prepared in our office based on information we received from the City of Fort Lauderdale Right-of-Way Department.

THE COURT: Gentlemen, I only set five minutes, and I think the Court is really --

MR. JUDGE: Well, then, it's illegal that he should have some type of proof that this was subject to unrecorded lease.

THE COURT: Okay, then, if there is nothing further, the Court is going to deny Mr. Judge's motion based on his representation to the Court today.

(Whereupon, the hearing was concluded.)

CERTIFICATE

I HEREBY CERTIFY that the foregoing, pages 1 to and including 8, is a true and correct transcription of my stenographic notes of proceedings had before the Honorable BARBARA BRIDGE, Presiding Judge, at Broward County Courthouse, Fort Lauderdale, Broward County, Florida, on the 25th day of February, 1981, commencing at 11:00 o'clock A.M.

IN WITNESS WHEREOF I have hereunto affixed my hand this 11th day of November, 1983.

Judy L. Heiss

Registered Professional Reporter

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA. CIVIL ACTION

CITY OF FORT LAUDERDALE, a)
Municipal corporation of)
Florida,)
) No.: 80-10997
Petitioner,)
)
vs.)
)
LAVERNE W. MOORE, et. al.,)
)
Defendants.)

Fort Lauderdale, Florida
January 5, 1981
1:30 o'clock P. M.

The above-entitled cause came on for
Hearing on the Defendants' Motion to Set
Aside Order of Taking, before the Honorable
BARBARA BRIDGE, Presiding Judge, at Broward
County Courthouse, Fort Lauderdale, Broward
County, Florida, on the 5th day of January,
1981, commencing at 1:30 o'clock P. M.

Bass Reporting Service, Inc.

APPEARANCES:

ROSS, NORMAN & CORY, P.A.,
by DONALD H. NORMAN, ESQ. of counsel,
appearing on behalf of the Petitioner.

LAW OFFICES OF TOM BUSH,
by TOM BUSH, ESQ., of Counsel,
appearing on behalf of the Defendants.

LAW OFFICES OF BETTY BARON,
by BETTY BARON, ATTORNEY-AT-LAW, of
counsel, appearing on behalf of Marilyn
Baron.

<u>DATE</u>	<u>PROCEEDINGS</u>	<u>PAGE</u>
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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
Minister Jacob Judge	8	12
Stephen Cole	13	15

THE COURT: All right.

Do you want to come into my office, gentlemen.

(Whereupon, a discussion was held off the record in the Judge's chambers.)

THE COURT: All right. Back on the record.

Now, gentlemen, based upon what I've heard at this time, it's my understanding, Mr. Bush, that you are waiving the notice to Mr. Judge, but that you desire to cross examine not as to the appraisal but as to the public use and purpose of this taking; is that correct?

MR. BUSH: That's correct. Basically, my position is because of the lack of notice that this particular Defendant had as to Parcel 3-8.

THE COURT: Um-hmm.

MR. BUSH: I do not know whether there was a proper inquiry into the necessity for the taking, and that's the only issue that

I'm concerned about. We are by no means stipulating to any fair market value of the property, but that's not the issue that I wish to litigate at this time. That issue will be litigated at a subsequent time, and I'm not waiving any rights as to that.

My concern is with the City of Fort Lauderdale being able to convince the Court by a preponderance of evidence there is, in fact, a necessity for the taking of Parcel 3-8.

MR. NORMAN: We have agreed we will represent the evidence upon which that determination was made so that you have a full opportunity to cross examine and present whatever proof you wish to the contrary.

MR. BUSH: And I would like to take advantage of that.

THE COURT: All right, gentlemen.

I'll set that matter from 10:00 to 12:00 this Friday, which is January -- Let's see-- January the 9th. That's 10:00 in the morning.

Gentlemen, you are to let me know tomorrow morning. You can get your people together. It would be rather short notice, but I happen to have a cancellation we can put you into if you can get your people together.

Adjourned and off the record.

(Thereupon, the hearing was adjourned until January 9, 1981, commencing at 10:00 o'clock A. M.)

CERTIFICATE

I HEREBY CERTIFY that the foregoing, pages 1 to and including 20, is a true and correct transcription of my stenographic notes of testimony taken and proceedings had before the Honorable BARBARA BRIDGE, Presiding Judge, at Broward County Courthouse, Fort Lauderdale, Broward County,

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY,
FLORIDA

CASE NO. 80-10997-CG

CITY OF FORT LAUDERDALE, :
 :
 Plaintiff, :
 :
 -vs- :
 :
REV. JACOB E. JUDGE, SAMUEL :
JUDGE and LAVERNA MOORE, :
et al., :
 Defendants. :

 :

Fort Lauderdale, Florida
April 26, 1985
1:30 o'clock P.M.

APPEAL ON BEHALF OF DEFENDANT

APPEARANCES:

THOMAS J. ANSBRO, JR., ESQ.,
Assistant City Attorney,
Appearing on behalf of the
Plaintiff,

ROBERT H. SCHWARTZ, ESQ.,
Appearing on behalf of the
Defendants.

COUNTY REPORTERS, INC.

I N D E X

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The above-styled cause came on for Non-Jury Trial before the HON. PATRICIA W. COCALIS, as Judge of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, at the Broward County Courthouse, Fort Lauderdale, Florida, on the 26th day of April, 1985, commencing at 1;30 o'clock P.A.

THEREUPON, the following proceedings were had;

MR. JUDGE: I would like to give you this, please.

THE COURT: Okay.

Are you ready?

MR. ANSBRO: Yes.

THE COURT: Let's start.

MR. ANSBRO: Shall we swear the people in at this point or --

MR. SCHWARTZ: Well, it might be very helpful for the Court if we made a brief opening.

THE COURT: I saw the box of volumes and I decided not to go through the entire box.

MR. SCHWARTZ: I request the opportunity to give the Court a brief opening statement.

THE COURT: Okay.

MR. SCHWARTZ: The issues that are involved - this is a condemnation proceeding involving a parcel, which will be referred to as 3-8. It is one parcel in a housing development project in the northwestern section of the City of Fort Lauderdale and it is the parcel that involves the rights of Mr. Judge.

Basically, the background facts are these. There was a contract for deed, dated in 1975, by and between a lady named Baron and Jacob and Samuel Judge, who are brothers. As is the custom, the contract for deed was not recorded.

At the time that the eminent domain action was filed in 1980, June of 1980, the record owner of the property, Mrs. Baron, was

served and her husband, although he had no interest in the property, was aware of the contract for deed because he, in fact, had prepared the contract for deed. His sister, Betty Baron, who is seated at the end of the counsel table, filed an answer on behalf of the record owner, Mrs. Baron, her sister-in-law. In her answer she reflected that there was an unrecorded contract for deed, which I previously referred to.

Now, there will be testimony, Your Honor, concerning discrepancies between two contract for deeds. One is attached to a pleading that Reverend Judge filed yesterday and the original is with Ronald Baron, who is here to testify.

I won't say anything more because the proof will demonstrate what I am talking about.

THE COURT: There are two --

MR. SCHWARTZ: Two executed orders or something else going on, but we'll have to hear that testimony.

THE COURT: Okay.

MR. SCHWARTZ: Now, Mr. Judge is -- his position, number one, is, he was not given notice of this other lawsuit.

Samuel Judge will not be here. His interests are being taken care of by Jacob Judge, my client.'

The position, number one, is that Betty Baron filed the answer on behalf of her sister-in-law reflecting the interest of Samuel and Jacob Judge and property by virtue of the unrecorded contract for deed, but never gave them notice and the pleadings were never filed on their behalf.

The City was made aware of this situation sometime later.

Betty Baron's answer was filed on July 18, 1980, and the end result was that Samuel and Jacob Judge were added as party defendants in this action in October of 1980 by an order entered by Judge Bridge.

At that point, Reverend Judge retained the services of Tom Bush, who represented his interest in this action.

On or about November 17, 1980, Mr. Bush filed pleadings on the Judges' behalf, including a motion to set aside the order of taking and there were various hearings either scheduled or heard before Judge Bridge in early January of 1981.

But, by that point, Mr. Bush and Reverend Judge had reached a point of dissension or conflict and Tom Bush withdrew.

There was a hearing where a conversation was held on the record as to whether or not Reverend Judge waived the burden upon the City of proof of necessity of the taking.

It's our position that because of the withdrawal of Mr. Bush and because of the facts and circumstances that Reverend Judge did not make a knowing waiver of his rights to proof of necessity, therefore it is our position that the two issues before the Court

on this non-jury calendar today are, number one, notice. I think the record will clearly reflect that he was not given notice to commencement of this action. I don't think there will be a great deal of controversy about that.

Secondly, because of the status of the proceedings and the contemporaneous withdrawal of Tom Bush, we feel that the waiver is not demonstrated by the record and, therefore, this Court must determine whether or not the City can establish the statutorily required necessity for the taking.

I think any other issues would be reserved for later.

Now, Reverend Judge maintains and it's one of the issues that I have raised in the pre-trial stipulation that the City had actual knowledge that he had an interest in the property throughout these proceedings from 1979, actually when the negotiations with the land owners were going on prior to

the filing of the eminent domain proceeding, all the way through until the present time, and that the City deliberately pretended that he did not exist.

His position is that the City allowed three churches to remain in the project immune from the condemnation proceeding, but determined that his property, and we'll prove that he had always designated and intended for use as a religious facility, was not subject to the same exemption that the other three churches in the area were and have been and, therefore, his constitutional rights have additionally been violated by virtue of the fact that the City even tried to take the property in the first place when it left three substantially equivalent structures standing.

Now, it should be pointed out, Judge, that the premises that the improvements on parcel 3-8 were ultimately demolished by a Court order based on a writ of assistance

sought by the City. There was a period of time that a hiatus was created and Mr. Norman, who was special counsel to the City, stated on the record and did so did not take steps to demolish the property until such time as it was one of the various Judges that had been involved in this litigation ordered it done. So, the property has actually been demolished.

Mr. Judge's position is that the remedy is -- the remedy that he's entitled to is a judiciary formulated remedy that is in the form of an equitable remedy to undo the wrong that has been done him, to his property rights, by the demolition of the church and not payment of fair market value.

In a nutshell, that's it.

THE COURT: Okay.

MR. SCHWARTZ: His position is that it was designated for church use and everybody knew it and the City's position is that it was abandoned and it was not being used for anything and that's a proof question.

MR. ANSBRO: Judge, the City has maintained since I --

I was appointed to take over this case for the City a couple of years ago from Mr. Norman. Up until that time he had represented the City in all the eminent domain proceedings pertaining to this redevelopment project.

It was my understanding that the posture of the case when I received it was there was one issue left and that was the value of the property and a just and fair compensation due Mr. Judge and his brother. So, I proceeded all along since that time for the last couple of years trying to get that issue heard by the Court.

It was suggested an attorney be appointed to help Mr. Judge frame the issues for him and, hence, Mr. Schwartz was appointed by Judge Futch, I believe, a couple of years ago, not long after my involvement in the case.

Since then we have tried to narrow the issue as best we can, but the City has always maintained that we want to find out what the value of the property was at the time it was taken and pay the people to whom the money is owed.

So, the issues in this pre-trial stip, the stipulation, and there are five, there's only one that the City agreed -- actually to what we agreed to retain to be heard and that's again the issue of compensation.

I believe the City could show based on the proceedings that have gone on before in this case with Judge Bridge and --

THE COURT: Tedder.

Q Now, did you ever give up your right to have the City prove they were entitled to the property? Did you ever tell the Court that you did not want the City to prove to the satisfaction of a judge that they had the right under all the circumstances to take your property?

A. No, sir. The only thing that I tried to prove to the Court is that the City committed a fraud from the first day they took my property up until this date and the facts are proven.

Q And do you -- do you maintain today that you are entitled to have the City prove why they picked out your property, why they didn't let it remain when there were other churches in the area?

Do you want this judge here to decide whether the property was --

A Well, what I want the City to do is, to come -- what should be done is that the City come in and let a jury find them guilty

of defrauding me out of my property with the help of Judge Bridge and Judge Tedder, Mr. Baron, Betty Baron and that's what I am looking for and I believe the jury will find them guilty.

Q Let me ask you this. At all times during your conversations with Mr. Baron, your conversations with Mr. Bush, conversations with the City, your conversations with me throughout that whole period that covers about five plus years, has it always been your position that your intention was to use that property for religious purposes and, therefore, was not subject to being taken away from you by the City?

A I think everybody knew that, but that was not important from the time that I find that out. The most important thing that was important when I find that out is why did the City commit a defraud.

I tried to present to the Court that you find out why did the City officials and

Judge Bridge and them lie and defraud me out of the property before you and they try and prove and they already done took the property and they must have keyed Mr. Baron because Mr. Baron asked them to let me get off the hook and Mr. Baron never would acted on that. They probably told me and Mr. Baron -- Mr. Baron said judge wanted \$25,000. I don't know which one of them is lying, but that petition proving somebody is lying except me.

MR. SCHWARTZ: Do you want to ask him any questions?

That's all I have.

May, May 14, of the same year --

Q Referring to your log again?

A Yes, I am.

1980. I had made -- I had made a notation to myself on this date, 5-14-80, to get a copy of the contract for deed in the name of the tenant.

The reason that I was asking for this is because Mr. Baron had indicated that there was a contract for deed on this property.

Q When did he indicate that?

A This -- this was back in October of 1979.

Q According to your log, that meant that at that time you knew there was -- to your belief there was a tenant?

In other words, how did you come to the conclusion there was a contract for deed at that time?

A Mr. Baron said he had a contract for deed.

Q Okay.

 The first time you entered in your log, however, is May 24, 1980? The 14th, rather?

A Yes, right.

Q Go ahead through and tell the Court what happened.

A Well, I did speak to Mrs. Betty Baron at that time and she said to me, and I understood at that time, and am still not clear on this, that she was an attorney also. So, when she said to me that she thought this would have to go condemnation, I assumed she knew enough about the law to recognize that it would head in that direction.

 However, Mrs. Baron said she would check with her brother about the tenant's name and a copy of the contract for deed.

Q So?

A So then approximately a week later, on May 21st, of 1980, once again I requested by mail the above information, which would be

the contract for deed so that I would know who this tenant or whoever was.

And, in June --

THE COURT: Who did you addresses that letter to?

THE WITNESS: To Mrs. Baron, to the best of my recollection.

Q (By Mr. Ansbro) Betty Baron, the lawyer?

A Yes.

Then, about -- according to my log, it was June 17, of 1980, that Mrs. Betty Baron was surprised that her brother did not send the information and she promised that she would once again ask him to do so.

I made a note in my log after that particular call that my log parcel 216 shows Betty Baron was surprised, as stated above, that her brother had not sent us the information on parcel 3-8.

She further stated that she will call him for his cooperation once again.

Mrs. Baron told me she was leaving on vacation June 23, 1980, and would return August 25, 1980.

Q Okay.

What does your next log entry indicate?

A June 26, of 1980, I called Mr. Baron and asked him for a copy of the unrecorded agreement for deed.

We had nothing that we could find in the Courthouse records or anything, so we had to assume it was unrecorded.

He said he would send this with the abstract and the address of Mr. Jacob Judge and, at that time, I noted Mr. Baron's telephone number and also at that time Mr. Baron said that Mr. Judge was now asking for \$25,000 for the property.

Q Now, I note this is the first time in your log that the name Jacob Judge appears.

A This is the first time I knew of Mr. Jacob Judge. Up until that point I had never heard of the gentleman.

Q You also indicate he was going to send an abstract. Why would he send that if he already had one?

A Well, apparently he had a copy of the abstract.

As a real estate officer, I knew at the time that the abstract is not always in the abstract warehouse because any homeowner has the right to ask for his abstract and keep it on his person, as many people used to do. I said on his person. You keep it in your home, or whatever. And, in so doing, when something legal comes up you would have to go from scratch if there is no abstract, and you would have to start from the very beginning.

So I thought that Mr. Baron or Mrs. Baron, whoever, kept the abstract at their home or their officer, and that's why he said

he would get it for me. It did not seem strange to me at all.

Q Okay.

Let me ask you now -- this is June 26th of 1980?

A Right.

Q When you first learned of the name Jacob Judge, did you know whether or not the lawsuit, the petition, or condemnation pleading had been filed yet?

A Okay. A petition.

Q A lawsuit for condemnation on all the parcels? Would you have known that?

A Okay. A petition.

Q A lawsuit for condemnation on all the parcels? Would you have known that?

A No. I'm not sure. I'm not sure at that time because we had so many parcels.

Q That is the point we're at now.

Were you required to furnish information to Mr. Norman as to who owned the property or what you found out?

A Yes. Any time I had any knowledge that I felt was beneficial to Mr. Norman, I would report to him, as I did to Mr. Cole, who was my supervisor.

Q What was the next action you took on the property?

A Then ~~in~~ September, September 4, of 1980, I called Mr. Baron at his home. I left word for him to call me.

Q Why did you call?

A Apparently I was still trying to find out if he's going to send this abstract and the address of Mr. Jacob Judge because I had not received anything.

Q How about the agreement for deed?

A I had not received that either. He never -- well, I'll retract that. Subsequently, I guess, this thing did show up.

Q Well, go ahead.

A At that time, I had no idea if there were, in fact, an agreement for deed.

Q You're the guy from the City trying to find out?

A Yes, I am trying to find something here so we can contact proper people.

Q What was the next action taken?

A Okay. About two weeks later, on September 24, 1980, I talked to Mr. Baron and was told by him that under no uncertain terms this thing would get out of hand and he wanted to get off the hook, which were his exact words. He wanted to get off the hook with Jacob and his brother Samuel.

Mr. Baron told me he would rather the City would deal with Mr. Jacob and that the City get the money and that Mr. Baron would then get his money from the Courts.

Q Is that the first time you ever heard of Samuel?

A Yes.

Q Now --

A I didn't know anything about a Samuel at all until Mr. Baron at that time brought the name up.

Q Do you know -- the log doesn't indicate, but do you know if you asked again for the deed?

A Oh, yes. That was the purpose for my call.

Q The next entry then?

A The next was October 22, of 1980, and this is when I went to Court with Mr. Norman on that morning and we were assured the Court at that time that we would not raise the building and Mr. Judge was at that time named a party defendant.

Q Was Mr. Judge present?

A Yes.

Q Do you recognize him?

A Yes. I recognize the gentleman sitting across from me.

Q Are there any other entries --

A Yes.

Q -- that would relate to Mr. Judge or his brother?

A Right.

October 23, a day later, I called Mr. Baron and again left word for him to call me back.

Q Why was that call made?

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

NO. 80-10997- CT

CITY OF FORT LAUDERDALE,)
)
Plaintiff,)
)
vs.)
)
LAVERNE MOORE, et. al.,)
)
Defendants.)
)
_____)

JOINT PRE-TRIAL STIPULATION

The parties hereby files this as their
Joint Pre-Trial Stipulation in the captioned
matter:

STATEMENT OF FACTS

As a part of a federal project, certain
parcels of land in the City of Fort
Lauderdale, approximately one hundred (100)
in number, were subjected to an eminent
domain proceeding. The vast majority of
these parcels were purchased by negotiation
by and between the City of Fort Lauderdale
and the respective land owners. Certain of

the parcels required the filing of suit including the parcel which is the subject matter of this litigation. The Honorable Don Norman was employed by the City of Fort Lauderdale as special counsel for the City in the eminent domain proceedings. The record owner of the parcel in question is Marilyn Baron. In 1976, a contract for deed was entered into by and between Marilyn Baron and Jacob and Samuel Judge. There is some indication that there had been a previous contract for deed, but this document is not presently in existence. There is a payment schedule in the possession of Ronald Baron, the husband of Marilyn Baron, indicating payments that were made by either of the Judges extending back to 1975.

Various pleadings were filed in this case, including an Answer and Affirmative Defenses filed by Attorney Bette Baron, the sister of Ronald Baron, who represented the

owner of record, Marilyn Baron. Reference to the contract for deed appears in some of the pleadings, but here is a dispute as to whether or not the holders of the contract, that is, Samuel and Jacob Judge, were given timely notice of the suit. Numerous hearings were held before Judges Bridge, Weissing and Tedder, all of which, with one exception, have been transcribed and will be presented to the Court. For a period of time, Samuel and Jacob Judge were represented by Tom Bush. Mr. Bush waived the demonstration of necessity of the taking, but the validity of this waiver is a contested fact. The property was ultimately taken and the building thereon demolished.

The contention of the Judges is that they had entered into the contract for deed with the intention of establishing a church congregation on the premises, that had they been given proper notice and the opportunity to be heard, they would have presented this

evidence to the court and that based on the presentation of this evidence, the City of Fort Lauderdale would have been unable to carry its burden of showing the necessity for taking.

An additional factual contention made by the Judges is that pertaining to the value of the property. In that regard, various appraisals were done, and the amount of Nineteen thousand (\$19,000.00) Dollars were paid into the registry of the court, where it remains to the present time.

The third factual contention made by the Judges is that the whole proceeding violated rights protected under both the Constitution of the United States and the Constiutution of the State of Florida relating to the deprivation of their property without due process of law.

Many of the facts, particularly the testimony at the various hearings, will be subject to stipulation as previously indicated as these hearings were transcribed.

LIST OF PENDING MOTIONS

NONE

STIPULATED FACTS

The parties can stipulate to the authenticity and admissibility of the eminent domain file maintained by the City of Fort Lauderdale and to the other documents that relate thereto. In addition, the parties are able to stipulate to the authenticity of all court records relating to this litigation insofar as they may be relevant to the issues presented. This includes transcripts from previous hearings conducted in this matter before Judges Bridge, Weissing and Tedder.

ISSUES PRESENTED

1. Whether or not there was a legally effective waiver of the issue of necessity by virtue of the action taken by Mr. Bush, allegedly on behalf of the Judges.
2. Whether or not the refusal to set aside the order of taking, under all the facts and circumstances relating to waiver, notice, and/or the opportunity to contest the taking by the Judges amounted to error, which would mandate the setting aside of the previous orders in this cause.

3. The value of the property in question, that is, the just compensation due the Judges as a result of the eminent domain proceeding.
4. Any claims that may be asserted by the owner of record, Marilyn Baron, for monies allegedly due on the contract for deed, dated March 6, 1975.
5. Any issues relating to the deprivation of any constitutional rights pursuant to the Constitution of the State of Florida and of the United States by virtue of the eminent domain proceeding.

ESTIMATED TRIAL TIME

Five (5) days.

PEREMPTORY CHALLENGES

Three (3) for the Defendant

Three (3) for the Plaintiff

LIMITATION ON WITNESSES

NONE

NAME OF ATTORNEY TO TRY CASE

Robert H. Schwartz, for the Defendant
T. J. Ansbro, for the Plaintiff

WITNESS LIST

Reverend Jacob Judge
3400 NW 5th St.
Ft. Lauderdale, FL 33311

Samuel Judge
Address unknown at this time

Steven Cole
Real Estate Division of Engineering Dept
City Hall, 3rd Floor
100 N. Andrews Ave.
Ft. Lauderdale, FL

Chester Good
City of Ft. Lauderdale Parking Division
101 N. Andrews Ave.
Ft. Lauderdale, FL

Donald Norman, Esq.
2720 E. Oakland Park Blvd.
Ft. Lauderdale, FL 33306

Ronald Baron
c/o Bette Baron

Marilyn Baron
c/o Bette Baron

Bette Baron, Esq.
11615 NE 15th Ave.
Ft. Lauderdale, FL

Tom Bush, Esq.
321 SE 15th Ave.
Ft. Lauderdale, FL

An appraiser of real estate whose name
will be furnished at a later date.

Any and all employees of the City of
Fort Lauderdale whose names appear in
the condemnation file and whose ident-
ties are known to counsel for the
parties and further, the parties have
stipulated that this identification of
these potential witnesses is adequate.

EXHIBITS

1. The files kept and maintained by the witnesses.
2. The condemnation files maintained by the City of Ft. Lauderdale. These exhibits will likewise be stipulated by the parties.

Office of the City Attorney
P. O. Box 14250
Ft. Lauderdale, FL 33302

BY: _____
T. J. ANSBRO

GUNTHER, GRIMMETT & WHITAKER
707 SE 3rd Ave., Ste. 400
P. O. Box 14218
Ft. Lauderdale, FL 33302

BY: /S/
ROBERT H. SCHWARTZ

RHS:lc 07/30/85
83-3238

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 80-10997-CG

CITY OF FORT LAUDERDALE,

Plaintiff,

vs.

LAVERNE MOORE, et. al.,

Defendants.

MOTION TO RE-HEAR

COME NOW the Defendants, JACOB JUDGE and SAMUEL JUDGE, by and through their undersigned attorneys, and pursuant to Rule 1.530 Fla. R.C.P., move this Court for a re-hearing of its Order dated July 22, 1985, upon the following grounds:

1. The Court failed to consider the proof presented by the Defendants concerning the inconsistencies between the "Contracts for Deed" and its relationship with the knowledge of the CITY OF FORT LAUDERDALE of

the existence and identity of the JUDGES as equitable owners of the property in question.

2. The Court failed to properly consider the proof of non-waiver presented by the Defendants.

WHEREFORE, these Defendants move this Honorable Court for a Re-Hearing, for all of the foregoing reasons.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to: TOM J. ANSBRO, JR., ESQUIRE, Assistant City Attorney, Post Office Drawer 14250, Fort Lauderdale, Florida 33302 and BETTE S. BARON, ESQUIRE, 11615 Northeast 21st Drive, North Miami, Florida 33181, this 30th day of July, 1985.

GUNTHER & WHITAKER, P.A.
Attorneys for Defendants, JUDGE
Post Office Box 14608
Fort Lauderdale, Florida 33302
(305) 523-5885 Broward
(305) 940-9172 Dade

BY /S/
ROBERT H. SCHWARTZ

RHS:lc 8/20/85
83-3238

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 80-10997-CG

CITY OF FORT LAUDERDALE,

Plaintiff,

vs.

LAVERNE MOORE, et. al.,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO RE-HEAR

It is the position of the Defendants, JACOB JUDGE and SAMUEL JUDGE, that the Court failed to consider the proof developed at previous hearings in toto, and therefore, reached an erroneous conclusion on the issue as to waiver of the demonstration of necessity by the CITY OF FORT LAUDERDALE.

A brief chronology of the previous hearings demonstrate the JUDGES' position. On October 21, 1980, an Order was entered allowing a substitution of parties, making

the JUDGES Defendants in the case. On January 5, 1981 Attorney Tom Busch set down a Motion to Set Aside an Order of Taking, previously entered, for hearing. At page 4, lines 8 and 9 of that hearing, the propriety of the taking was raised as the issue before the Court and at page 5, line 9 the CITY agreed to a new hearing on the issue of necessity. This was reaffirmed at page 19, lines 15-17, where the issue of necessity was again reaffirmed. At page 20, line 2 the CITY agreed to represent evidence on the question on necessity.

It was the following hearings that created the confusion. On January 9, 1981 Mr. Busch moved to withdraw and the Court allowed his motion and at page 9, line 2 advised MR. JACOB JUDGE that he had the right to a hearing on the issue of necessity and that it was his obligation to so advise the Court when same was desired.

On February 25, 1981 an additional hearing was set and heard by Judge Bridge. This hearing was occasioned by Mr. Norman, special counsel for the CITY, who called up Mr. Busch's Motion to Set Aside the Order of Taking previously entered. At page 3, lines 18-22 the Court inquired of MR. JUDGE what his desires were and page 6 presents his response. A full reading of these hearings leads to the inescapable conclusion that MR. JDUGE was not aware of the legal implications of waiving a hearing on necessity. This is evidenced by the fact that knowledge that he was the equitable owner of the property and that in fact the CITY'S position was based upon a Contract for Deed which was a forgery. The evidence on this issue was presented at the hearing before this Court, but regardless of the Court's factual determination as to the sufficiency of that evidence, it is clear that MR. JUDGE relied upon his belief that a

fraud had been committed in his evaluation of his position. To state his position as simply as possible, he felt that the paramount issue was the issue of fraud on behalf of the CITY, and that to allow the CITY to proceed with a hearing on necessity would in fact amount to a waiver of that position. The net affect was that MR. JUDGE apparently abandoned the position that he had taken all along, that the CITY could not demonstrate necessity for the taking of the property as he had dedicated it to religious purposes and, therefore, the property should be relieved from the imminent domain proceedings as other church properties had been.

To impose the detriment of the alleged waiver on MR. JUDGE affectively deprives him of the opportunity to present the position that clearly was most important to him throughout. Particularly in light of the fact

that he was without counsel, he submits to the Court that the Petition to Re-Hear should be granted.

Respectfully submitted,

BY /S/

ROBERT H. SCHWARTZ

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to: TOM J. ANSBRO, JR., ESQUIRE, Assistant City Attorney, Post Office Drawer 14250, Fort Lauderdale, Florida 33302, and BETTE S. BARON, ESQUIRE, 11615 Northeast 21st Drive, North Miami, Florida 33181, this 20th day of August, 1986.

GUNTHER & WHITAKER, P.A.
Attorneys for Defendants, JUDGE
Post Office Box 14608
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(305) 940-9172 Dade

BY /S/

ROBERT H. SCHWARTZ
FLA. BAR NO. 301167

RHS:lc 06.05.86
83-3238

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 80-10997-CG

REV. JACOB E. JUDGE and
SAMUEL JUDGE,

Defendants/Appellants,

vs.

CITY OF FORT LAUDERDALE,

Plaintiffs/Appellees.

NOTICE OF APPEAL

NOTICE IS GIVEN that REV. JACOB E. JUDGE and SAMUEL JUDGE, Defendants/Appellants, appeal to the Fourth District Court of Appeal, the Order of this Court, which was signed on May 9, 1986 and rendered soon thereafter. The nature of this order is a final order determining the amount of compensation to be made to the Defendants for the property sought to be apportioned and affirming the previous determination of the

Court that the original order of taking was accomplished in conformity with due process to the extent that the Appellants waived a judicial determination of the public necessity required by law for a valid taking.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to: THOMAS J. ANSBRO, JR., ESQUIRE, Assistant City Attorney, Post Office Drawer 14250, Fort Lauderdale, Florida 33302; BETTE S. BARON, ESQUIRE, 11615 Northeast 21st Drive, North Miami, Florida 33181, and Rev. Jacob E. Judge, 3400 Northwest 5th Street, Fort Lauderdale, Florida 33311, this 5th day of June, 1986.

GUNTHER & WHITAKER, P.A.
Attorneys for Defendants/Appellants
Post Office Box 14608
Fort Lauderdale, Florida 33302
(305) 523-5885 Broward

BY /S/
ROBERT H. SCHWARTZ
FLA. BAR NO. 301167

IN THE
DISTRICT COURT OF APPEAL
FOURTH DISTRICT, STATE OF FLORIDA

CASE NO. 4-86-1309

REV. JACOB E. JUDGE and
SAMUEL JUDGE,

Defendants/Petitioners,

vs.

CITY OF FORT LAUDERDALE,

Plaintiff/Respondent.

NOTICE TO
INVOKE DIS-
CRETIONARY
JURISDICTION

**ON APPEAL FROM THE SEVENTEENTH JUDICIAL
CIRCUIT, BROWARD COUNTY, FLORIDA**

NOTICE IS GIVEN that REV. JACOB E. JUDGE and SAMUEL JUDGE, Defendant/Petitioners, invoke the discretionary jurisdiction of the Supreme Court to review the decision of this Court rendered on July 22, 1985. The trial court decision expressly construes a provision of the State or Federal Constitution.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to: THOMAS J. ANSBRO, JR., ESQUIRE, Assistant City Attorney, Post Office Drawer 14250, Fort

Lauderdale, Florida 33302, and BETTE S. BARON, ESQUIRE, 11615 Northeast 21st Drive, North Miami, Florida 33181, this 6th day of March, 1987.

GUNTHER & WHITAKER, P.A.
Attorneys for Petitioners
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Fort Lauderdale, FL 33302
(305) 523-5885 Broward

BY /S/
ROBERT H. SCHWARTZ
FLA. BAR NO. 301167

AMENDMENT [V.]

Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV.

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 9. Due process

No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against himself.

74.051. Hearing on order of taking

(1) If a defendant requests a hearing pursuant to s. 74.041(3), said defendant may appear and be heard on all matters properly before the court which may be determined prior to the entry of the order of taking, including the jurisdiction of the court, the sufficiency of pleadings, whether the petitioner is properly exercising its delegated authority, and the amount to be deposited for the property sought to be appropriated. Any defendant failing to file a request for hearing shall waive any right to object to the order of taking, and title shall be vested in the petitioner, upon deposit as hereinafter provided, which date shall be the date of valuation.

(2) If a hearing is requested, the court shall make such order as it deems proper, securing to all parties the rights to which they may be entitled, not inconsistent with the provisions of this section. The court may make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, amount of the good-faith deposit, and other charges, if any, as shall be just and equitable. If the court finds that the petitioner is entitled to possession of the property prior to final judgment, it shall enter an order requiring the petitioner to deposit in the registry of the court such sum of money as will fully secure and fully compensate the persons entitled to compensation as ultimately determined by the final judgment. Said deposit shall not be less than the amount of the petitioner's estimate of value, if the petitioner be the state or any agency

thereof, any county, the city, or other public body; otherwise, double the amount of petitioner's estimate of value.

(3) The court may fix the time within which and the terms upon which the defendants shall be required to surrender possession to the petitioner, which time of possession shall be upon deposit for those defendants failing to file a request for hearing as provided therein. The order of taking shall not become effective unless the deposit of the required sum is made in the registry of the court. If the deposit is not made within 20 days from the date of the order of taking, the order shall be void and of no further effect. The clerk is authorized to invest such deposits so as to earn the highest interest obtainable under the circumstances in state or national financial institutions in Florida insured by the Federal Government. Ninety percent of the interest earned shall be paid to the petitioner.

§ 2101. Supreme Court; time for appeal or certiorari; docketing, stay

(a) A direct appeal to the Supreme Court from any decision under sections 1252, 1253 and 2282 of this title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up, and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order of decree, appealed from, if interlocutory, and within sixty days if final.

(c) Any other appeal or any writ of certiorari intended to being any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

§ 1257. State courts: appeal: certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

(As amended July 29, 1970, Pub.L. 91-358, Title I, §172(a)(1), 84 Stat. 590.)

Rule 17. Considerations governing review on certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

NO. 86-2069

Supreme Court, U.S.
FILED

JUL 17 1987

JOSEPH F. SPANIOL, JR.
CLERK

in the
Supreme Court
of the
United States
OCTOBER TERM, 1986

REV. JACOB E. JUDGE AND SAMUEL JUDGE,
Petitioners,
vs.
CITY OF FORT LAUDERDALE, FLORIDA,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

BRIEF OF RESPONDENT

DONALD R. HALL,
City Attorney

and

T. J. ANSBRO, JR.
Deputy City Attorney
Counsel of Record

City Attorney's Office
City of Fort Lauderdale
P.O. Drawer 14250
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(305) 761-5940

Attorneys for Respondent

2488

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STATEMENT OF THE CASE

This is a Response to the Petition for Writ of Certiorari to the Florida Supreme Court, arising from an order of that Court which was entered on March 17, 1987 (Petitioners' Appendix A. 1). The proceedings stem from an eminent domain proceeding instituted by the Respondent, the City of Fort Lauderdale, Florida (the "City") in 1980, which involved condemnation of approximately thirty parcels of land. An Order of Taking for all parcels had been entered on August 7, 1980 (Petitioners' Appendix, A. 3, page 4). The Petitioners (the "brothers") held an unrecorded Agreement for Deed with respect to one of the parcels of land sought to be acquired by the City in connection with a housing redevelopment project in Fort Lauderdale known as the "Near Northwest Redevelopment Project". (Petitioners' Appendix, A. 8, page 4). The brothers' interest in the parcel was not originally known to the City, since their existence did not appear of record. They were included within the proceedings (subsequent to entry of the Order of Taking) when their equitable property interest was discovered and they were identified (Petitioners' Appendix, A. 8, pages 4-6, 24).

Several months after they were added as parties to the condemnation suit, the brothers, with assistance of counsel, sought to set aside the original Order of Taking. At a hearing before the trial court on January 5, 1981, the City offered and agreed to "re-present the evidence" and afford the brothers "full opportunity" to cross-examine witnesses and present their own evidence in opposition to the City's claim of public necessity for the subject parcel (Petitioner's Appendix, A. 7, pages 3-4).

At a subsequent hearing, held on January 9, 1981, (Respondent's Appendix A. 1, pages 1-11, which is a transcript of a hearing on a Motion to Withdraw filed by Mr. Bush, the brothers' counsel), Mr. Bush apprised the trial court that it had been expected that "today would be a day in which the City of Fort Lauderdale would present—re-present its evidence on the necessity of taking of Mr. Judge's property" (Respondent's Appendix, A. 1, page 3). The City, represented by its attorney (Mr. Norman) inquired "if Mr. Judge would like us to proceed to put on evidence as to the necessity, or if he wants time to get another attorney, or whatever he wants to do so we know how to proceed" (Respondent's Appendix, A. 1, page 6). The trial court suggested to Mr. Judge that,

* * * if you would like, sir, the City is more than willing to go through the necessity order of taking procedure that, you know, they have done before.

(Respondent's Appendix, A. 1, page 7).

Mr. Judge's response was non-committal (Respondent's Appendix, A. 1, page 7). When the hearing concluded, the trial court told Mr. Judge that if he wanted a hearing on the public necessity matter, he was to notify the Court and the City (Respondent's Appendix, A. 1, page 9). Mr. Judge agreed to do so (Respondent's Appendix, A. 1, page 9).

On February 25, 1981, the Motion to Set Aside the Order of Taking was heard by the trial court (Petitioners' Appendix, A. 6). The court asked if Mr. Judge desired to have a hearing on the Order of Taking.

That opportunity was rejected (Petitioners' Appendix, A. 6, pages 3-4). The court then ruled that Mr. Judge's Motion to Set Aside the Order of Taking would be denied, "based on his representation to the Court today" (Petitioners' Appendix, A. 6, page 6).

More than four years later, a hearing was held on April 26, 1985, before a newly-assigned trial judge (Respondent's Appendix, A. 8). The hearing was sought by the current attorney for the brothers, for a determination as to whether the issue of public necessity had been knowingly waived by the brothers in early 1981. While the City concurs that the issue of waiver was raised by Petitioners in a document entitled "Joint Pre-trial Stipulation" (Petitioners' Brief, page 7), that Stipulation was not jointly filed and it was not signed by counsel for the City (see Petitioners' Appendix, A. 9, page 8). The City maintained that the only remaining issue in 1985 was the issue of compensation for the property (Petitioners' Appendix, A. 8, page 12). An Order ensued, in which the court concluded that the necessity issue had been "knowingly and intelligently waived" (Petitioners' Appendix, A. 5, page 2).

In March of 1986, a jury trial was held, resulting in a verdict of compensation for the parcel in the total amount of \$19,000.00 (Petitioners' Appendix, A. 3, page 4). The ruling pertaining to waiver of the public necessity issue was appealed by petitioners; after oral argument, it was Affirmed Per Curiam by the Fourth District Court of Appeal of Florida (Petitioners' Appendix, A. 2) and ultimately dismissed by the Florida Supreme Court (Petitioners' Appendix, A. 1). The latter Court's ruling also stated that "No Motion for Rehearing will be entertained by the court." (Petitioners' Appendix, A. 1). The present Petition followed.

SUMMARY OF ARGUMENT

The Florida courts have thoroughly scrutinized the factual issue of waiver. They properly concluded that the City need not re-present evidence of its public necessity to acquire the subject land. Jacob Judge, acting on behalf of himself and his brother, knowingly and intelligently relinquished the opportunity to an evidentiary hearing of that threshold eminent domain issue. The opportunity was afforded in early 1981 to the brothers, first by the City and then by the trial court, for the re-presentation of "necessity" evidence. During a subsequent hearing in 1985, and after an extensive review of the record of the earlier proceedings, it was confirmed that the brothers had knowingly declined the opportunity to challenge the municipal need for the land. Petitioners have not presented to this Court a federal question which conflicts with any other court decision, nor one which involves an important question of federal law. U.S. Sup. Ct. Rule 17.1(b), (c), 28 U.S.C.A.

ARGUMENT

THE DETERMINATION OF THE FLORIDA COURTS, THAT PETITIONERS HAD WAIVED THEIR RIGHT TO A JUDICIAL DETERMINATION OF PUBLIC NECESSITY IN AN EMINENT DOMAIN PROCEEDING, WAS NOT VIOLATIVE OF PETITIONERS' RIGHTS AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

The brothers seek review of a trial court ruling entered approximately two years ago, which ruling expressly found that the brothers

* * *

knowingly and intelligently waived the right to contest the issue of Petitioner's (the City's) necessity for the taking of Parcel 3-8.

* * *

Order of July 22, 1985 (Petitioners' Appendix, A. 5, page 2).

As the Florida appellate court which reviewed that ruling previously determined in an unrelated case,

The most frequently and generally accepted definition of "waiver" is the intentional relinquishment of a known right, or the voluntary relinquishment of a known right, or

conduct which warrants an inference of the
relinquishment of a known right.

Wilds v. Permenter,
228 So. 2d 408 (Fla. 4th DCA 1969).

A review of the attempts in 1981 by the original trial court in these proceedings to afford the brothers an opportunity to have a new necessity hearing conducted, if desired, constitutes the best evidence of both the intentions and concerns of the brothers. (Respondent's Appendix, A. 1, pages 7, 9; Petitioners' Appendix, A. 6). Those intentions and concerns were re-visited and clarified, as is evident from a review of testimony elicited from Mr. Judge at the April 26, 1985 hearing. The single-minded purpose of the brothers, speaking through Mr. Judge, becomes apparent when his responses to questions at the latter hearing regarding the validity of the waiver are considered:

* * *

Q. (by Mr. Schwartz) Now, did you ever give up your right to have the City prove they were entitled to the property? Did you ever tell the Court that you did not want the City to prove to the satisfaction of a judge that they had the right under all the circumstances to take your property?

A. (Mr. Judge) No, sir. *The only thing that I tried to prove to the Court is that the City committed a fraud from the first day they took my property up until this date and the facts are proven.*

Q. And do you—do you maintain today that you are entitled to have the City prove why they picked out your property, why they didn't let it remain when there were other churches in the area?

Do you want this judge here to decide whether the property was—

A. Well, *what I want the City to do is, to come—what should be done is that the City come in and let a jury find them guilty of defrauding me out of my property with the help of Judge Bridge and Judge Tedder, Mr. Baron, Betty Baron and that's what I am looking for and I believe the jury will find them guilty.*

* * *

(Petitioners' Appendix, A. 8, pages 13-14; emphasis added).

If any questions remained over the validity of the 1981 waiver and its surrounding circumstances, they dissipated after the 1985 hearing, since the entire matter was thoroughly reviewed at that time by the new trial judge. Once the trial court weighed the testimony of the witnesses, supplemented by a subsequent review of the court file, comprised of twelve volumes of documents, and including a review of depositions and of each transcript of each of the prior hearings (Petitioners' Appendix, A. 5, page 1), it was apparent that the "necessity" issue was not a concern of the brothers. Nothing less than an unqualified return of the property and an admission of illegal conduct by the City was consistently demanded by the brothers:

* * *

(By the Court) . . .

All I can say to you, sir, is do you or *do you not want this hearing? Yes or no?*

(Mr. JUDGE): *No, I do not want to have an order of taking set aside, due to the fact that I have proof that the City has taken legal (sic) possession of the property, and was supposed to demolish the property the 28th of December.*

So the only possible way I could receive my property back—Let the City come and say, “Mr. Judge, there was a mistake. Mr. Judge, we are going to let you accept the responsibility of this property because it was illegal the way we took it.”

* * *

(Petitioner's Appendix, A.6,
pages 3-4; February 25, 1981
hearing on Motion to Set Aside
Order of Taking; emphasis added).

The waiver was expressly made and understood. Petitioners were not confronted with a Hobson's choice, compelling them to surrender one constitutional right in order to preserve another. The claim of fraudulent wrongdoing by the City and others was the only concern expressed by the Petitioners. That is a claim which remains unsubstantiated. It is not presented in this proceeding.

An important question of federal law has not been presented to this Court. No conflict with other court decisions has been shown by Petitioners. A factual determination of waiver was made by one trial court, thoroughly examined and upheld by a successor trial court, reviewed and sustained after oral argument by a Florida appellate court, and dismissed by the Florida Supreme Court.

CONCLUSION

The Florida courts were correct in their determination that the Petitioners knowingly and intelligently relinquished the right to a hearing on the issue of municipal necessity for acquisition of the subject land. The City respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

DONALD R. HALL,
City Attorney
T. J. ANSBRO, JR.,
Deputy City Attorney
Attorneys for Respondent,
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Telephone: (305) 761-5940

By _____

T. J. Ansbros, Jr.
Deputy City Attorney

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IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA. CIVIL ACTION

No.: 80-10997

CITY OF FORT LAUDERDALE,
a Municipal corporation of Florida,

Petitioner,

vs.

LAVERNE W. MOORE, et al.,

Defendants.

Fort Lauderdale, Florida
January 9, 1981
10:00 o'clock A.M.

The above-entitled cause came on for Hearing on the
the [sic] Defendants' Motion to Withdraw, before the
Honorable BARBARA BRIDGE, Presiding Judge, at
Broward County Courthouse, Fort Lauderdale, Broward
County, Florida, on January 9, 1981, commencing at
10:00 o'clock A.M.

APPEARANCES:

ROSS, NORMAN & CORY, P.A.,
by DONALD H. NORMAN, ESQ., of counsel,
appearing on behalf of the Petitioner.

LAW OFFICES OF TOM BUSH,
by TOM BUSH, ESQ., of counsel,
appearing on behalf of the Defendants.

ALSO PRESENT: JACOB JUDGE

Thereupon:

The following proceedings were had:

MR. BUSH: Your Honor, we are here on a Motion to Withdraw. And I'll explain to the Court the reasons behind the Motion to Withdraw.

This Court will recall that this week we were before this Court, and it was agreed at a short hearing that today would be a day in which the City of Fort Lauderdale would present—re-present its evidence on the necessity of taking of Mr. Judge's property.

Subsequent to the hearing of last week Mr. Judge and I had a telephone conversation, which I don't believe that I should really discuss with the Court because of it being a privileged communication between myself and Mr. Judge, but suffice it to say there was a disagreement in the position as to which way I should proceed in the

representation of Mr. Judge. And it was my suggestion, and at Mr. Judge's concurrence, that I withdraw from further representation of him.

It's especially at my desire, and I think that Mr. Judge—And he can speak for himself in a moment—But I think that he probably concurs in my desire to withdraw from representing him.

And that's basically the motion.

THE COURT: And you're in accord with that; are you, Mr. Judge?

MR. JUDGE: In accord.

THE COURT: Meaning you agree with that?

MR. JUDGE: I mean, I can't do anything but agree. According to the Constitution, Mr. Bush can either represent me, according to the Constitution, or not.

THE COURT: All right, sir.

Then I'll grant the Motion to Withdraw.

And then any further hearings, Counsel, or Mr. Judge, in your respective rights, you can set before me, gentlemen.

MR. BUSH: I'll be glad to give Mr. Judge or his new attorney, either one, copies of all correspondence and matters I have in my file. You can get anything you want in my file.

THE COURT: Do we have any further notices to go to Mr. Judge at his residence address?

MR. NORMAN: I wish the order would say where future notices would go. Of course, Mr. Judge has a brother, too, Samuel Judge, who is a party to this case, and we would not want to leave him out for any reason.

THE COURT: Okay.

Where should your notices go?

MR. BUSH: Did I file an appearance?

MR. NORMAN: I believe you filed for both Jacob and Samuel Judge.

MR. BUSH: I want to withdraw from Samuel Judge, also. Let's see if I did.

I did.

THE COURT: Yes. Your order is indicating it. Whoever had these files, sure—

MR. JUDGE: Shouldn't you discuss that with my brother before you withdraw with him?

MR. BUSH: The difficulty I have, I'll be glad to do that, and I'll be glad to set that down with him, but I never talked to his brother; and Mr. Judge was to provide me with a written authorization for me to represent Mr. Judge, which you never did.

MR. JUDGE: Yes, I did.

MR. BUSH: Do I have it?

Okay. So I'll just have to notice him along the same lines that I'll be withdrawing from representing him.

THE COURT: That's fine with me, but he's going to have to come in here, or if not in here—

MR. JUDGE: He have to sign the paper that he would like for you to withdraw or whether he would like for you to continue. I'm only speaking for myself and the Constitution of the United States.

MR. BUSH: That's fine. Your brother is—You know, he can either sign a stipulation or we can set it down for a hearing, Your Honor.

THE COURT: Would you give me another order then?

MR. BUSH: No, I'll give you a separate order on—

THE COURT: So we can have the address to notice Mr. Judge that's here today.

MR. NORMAN: I might ask at this time, if I can, if Mr. Judge would like us to proceed to put on evidence as to the necessity, or if he wants time to get another attorney, or whatever he wants to do so we know how to proceed.

MR. JUDGE: Judge, well, I mean, you know, it seems like we're just making a real big issue out of something that is very clear to anyone what's going on here. And I can't see why—Maybe me and Mr. Norman

and people down at the City Hall can get together and talk and solve this matter. I mean—

THE COURT: Well, Mr. Judge, what we could do, if you would like, sir, the City is more than willing to go through the necessity order of taking procedure that, you know, they have done before.

If you want to talk to them, and if you want them to go through that procedure, why don't you just write a letter—Put this case number on it—To Mr. Norman and say you want to have that hearing. If not, we'll just go along the way we are.

Is that agreeable, sir?

MR. JUDGE: Well, whatever they want to do.

MR. BUSH: Mr. Norman will be glad to speak with you, also. However, if you want to talk with him, if you want to sit down and just get across the table and talk with him, I think he's more than willing to do that.

I can't speak for him but—

MR. JUDGE: You see, Your Honor, it's not just particularly the property. You know, I begin to buy this property in '73. Purchase price of \$10,000. All right. From '73 up to today I paid \$15,000 on the property.

Mr. Baron sent me a financial statement stating that I owed him \$10,887.

THE COURT: Who is Mr. Brown?

MR. NORMAN: Baron.

THE COURT: Oh, Mr. Baron.

MR. JUDGE: Mr. Baron. Right.

And, you see, it just doesn't work out well.

THE COURT: Do you have all your records, sir, and everything?

MR. BUSH: Yes, he's got—He's absolutely right. What has happened is he got into an agreement for deed at 10 percent interest, which is resulting in him—in forcing him to pay the Barons, you know, a tremendous amount of money, which I have attempted to negotiate with the Barons. They're being hard-nosed. And so I have advised Mr. Judge to be hard-nosed back and not put the money in any interest-bearing account and not to do anything with the money, but let it sit in Court until they come down with the amount of interest.

THE COURT: That's something you agree with, anyway.

MR. BUSH: He's right.

THE COURT: That will have to be worked out between the parties, or maybe before we're done. But some kind of equitable or, what, distribution here.

Mr. Judge, then, at this time, If I understand you, if you want to get an attorney, fine sir. But Mr. Bush is going to send me an order saying he's withdrawn, and

any further notice on any hearings are going to go to you at your address.

MR. JUDGE: Yes.

THE COURT: What is that address, sir?

MR. JUDGE: 3400 Northwest 5th Street.

THE COURT: And that's in Fort Lauderdale, sir?

MR. JUDGE: Yes, ma'am.

THE COURT: Do you know your Zip Code?

MR. JUDGE: 33311.

THE COURT: 33311.

And then, sir, if you want the City to do a hearing called—which we call an Order of Taking, it's really a hearing on what the plans are and why they want to use the area for what they're doing, and what the necessity of it is. If you want that hearing, you notify Mr. Norman and the Court.

Would you do that, sir?

They were willing to do it today, but under these circumstances, then, we won't go ahead with that. But if you want to have that hearing, you notify the Court, sir.

MR. JUDGE: I'll do that.

THE COURT: All right.

This matter then, if there is nothing further, is adjourned and off the record.

MR. NORMAN: Thank you, Your Hōnor.

(Thereupon, the hearing was concluded.)

CERTIFICATE

I HEREBY CERTIFY that the foregoing, pages 1 to and including 9, is a true and correct transcription of proceedings had before the Honorable BARBARA BRIDGE, Presiding Judge, at Broward County Courthouse, Fort Lauderdale, Broward County, Florida, on the 9th day of January, 1981, commencing at 10:00 o'clock A.M.

IN WITNESS WHEREOF I have hereunto affixed my hand this 15th day of November, 1983.

[sig illegible]

(Reporter)